UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JORDAN KEIHDANO GARDINER, *Petitioner*, v. **GARRETT RIPA** , Field Office Director of Enforcement and Removal Operations, Miami Field Office, Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General; **RONNIE WOODALL**, Warden, Florida Baker Correctional Institute; **JOHN W. MINA**, Sheriff, Orange County Sheriff's Office; *Defendants.*	**Case No.: 3:26-cv-00033**

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND MEMO IN SUPPORT

TABLE OF CONTENTS

I. INTRODUCTION

Petitioner, Jordan Keihdano Gardiner, is currently being detained by ICE in the Florida Baker Correctional Institution in Sanderson, Florida. **Exhibit 1**. He was lawfully admitted into the USA in 2019 under the Visa Waiver Program ("VWP"). He has admittedly overstayed his grant of parole, but in the meantime, he married a U.S. citizen and has established a life here. He has an approved I-130 petition and a pending I-485 application for adjustment of status, but may not be able to finish those processes if ICE unlawfully deports him.

Through his habeas petition, Petitioner is challenging (1) Orange County Jail's unlawful detention of Petitioner beyond the 48-hours permitted under the immigration detainer regulations in 8 C.F.R. § 287.7. (2) ICE's unlawful detention of Petitioner without affording him the bond hearing to which he is entitled, and (3) ICE's failure to allow Petitioner time to confer with counsel regarding his legal documents, and failure to give Petitioner a forum to express his credible fear of return to his home country. He seeks immediate injunctive relief to protect him from ongoing and imminent harm caused by Respondents' actions.

First—Mr. Gardiner seeks a STAY OF REMOVAL to prevent DHS from advancing efforts to effectuate his removal during the pendency of this matter in an attempt to moot out this controversy. This is necessary because the administrative removal process is very fast-moving and is currently being executed by the government with a number of substantive and procedural defects. We hope to fix those defects, but this litigation cannot help the Petitioner if ICE improperly finalizes his order and removes him from the country while we are in the middle of litigation.

Second—he seeks a restraining order to prevent DHS from moving him to other judicial jurisdictions during the pendency of this matter in an attempt to pry jurisdiction from this Court

and thwart his attempts to litigate against unlawful detention and other unlawful procedures.

II. VERIFIED STATEMENT OF FACTS

A. About Mr. Gardiner

Mr. Gardiner is a national of the Turks and Caicos Islands. He was lawfully admitted to the United States on June 9, 2019 pursuant to the Visa Waiver Program ("VWP") and was authorized to remain in the United States for a period of 78 days. **Exhibit 2**.

Since his admission, Mr. Gardiner has established substantial ties to the United States. Most significantly, he married a United States citizen, and a Form I-130 immigrant visa petition filed on his behalf was approved on August 20, 2024. **Exhibit 3**. In mid-November 2025, through counsel, Mr. Gardiner filed a Form I-485 application for adjustment of status with U.S. Citizenship and Immigration Services, which USCIS receipted on November 26, 2025. **Exhibit 4**.

Mr. Gardiner has a well-founded fear of return to his home country. He comes from a [redacted]

Mr. Gardiner himself has been targeted for violence in the past due to [redacted] including being threatened and later shot at. As a result, he fears persecution and serious harm if returned. **Exhibit 5**.

B. Unlawful Detention by Orange County Jail

On November 22, 2025, Mr. Gardiner was arrested by the Orlando Police Department in connection with alleged vehicle-registration-related offenses. He denies any knowing wrongdoing and is actively defending against those charges. An initial allegation regarding a firearm in the

vehicle did not result in any formal charge and was formally declined by the State of Florida in December 2025. Mr. Gardiner has no history of violent criminal conduct. **Exhibit 6**.

Mr. Gardiner was detained at the Orange County Jail following his arrest. On December 17, 2025, at approximately 4:00 p.m., he posted bond and satisfied all state requirements for release. Despite this, he was not immediately released due to the placement of an immigration detainer.

The Orange County Jail was required to release Mr. Gardiner no later than forty-eight hours after he became eligible for release under state law. That forty-eight-hour period expired on December 19, 2025, at approximately 4:00 p.m. Nevertheless, Orange County Jail continued to detain Mr. Gardiner beyond that deadline and through the weekend, solely to await transfer to immigration authorities.

C. Unlawful Procedures During ICE Detention

On December 21, 2025, Mr. Gardiner was transferred into the custody of U.S. Immigration and Customs Enforcement ("ICE"). On or about that same date, an ICE officer presented Mr. Gardiner with multiple immigration forms, including a Notice of Intent to Issue a Final Administrative Removal Order.

The ICE officer insisted that Mr. Gardiner sign the documents immediately and without explanation. When Mr. Gardiner requested time to review the forms and consult with his attorney, the officer marked the forms as "refused to sign" and had another officer co-sign as a witness, falsely indicating that the contents had been explained to Mr. Gardiner.

Since that time, Mr. Gardiner has repeatedly attempted, himself and through counsel, to contest his custody, request parole, and express his fear of return to his home country. Despite

these efforts, Mr. Gardiner has not been afforded any meaningful opportunity to speak with a deportation officer, submit fear-based protection requests, or obtain information regarding a custody or bond determination by ICE.

To date, neither Mr. Gardiner nor his counsel has been able to identify or communicate with the Deportation Officer assigned to his case. Counsel has made repeated phone calls and sent multiple emails to ICE Enforcement and Removal Operations and to the Office of the Principal Legal Advisor seeking basic case information and asserting Mr. Gardiner's rights. These efforts have largely gone unanswered and have yet to result in a name or contact information for the Deportation Officer in charge of Mr. Gardiner's case. **Exhibit** 7.

D. Mr. Gardiner's Imminent Process-Free Deportation

Mr. Gardiner remains in ICE custody without having received a bond hearing, a meaningful custody review, or an opportunity to present his fear of return to his home country. He has not been given access to a deportation officer or properly served notice of his procedural rights. Those documents that were improperly served upon him indicate that the government is preparing an administrative order of removal against him without referral to immigration court—a process specific to VWP entrants like Mr. Gardiner, but one that is still eligible for bond hearings and asylum claims.

As a result, Mr. Gardiner faces the imminent risk of removal without due process, without access to counsel in any meaningful way, and without the opportunity to seek protection from return to a country where he fears serious harm. Each day of continued detention increases the risk that he will be deported without lawful procedures and before this Court has the opportunity to review the legality of the circumstances surrounding his detention and removal.

III. LEGAL STANDARD

Mr. Gardiner's request for injunctive relief is governed by "the traditional test for stays," *Nken v. Holder*, 556 U.S. 418, 433 (2009), which requires consideration of four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Pursuant to the traditional test for stays, courts balance the four factors, such that a stay is warranted even if absent a strong likelihood of success on the merits, so long as the petitioner can demonstrate "a substantial case on the merits" and the other factors tip sharply in her favor. *Hilton*, 481 U.S. at 778; *cf. Indiana State Police Pension Trust v. Chrysler LLC*, 556 U.S. 960, 960 (2009) (per curiam) ("[I]n a close case it may be appropriate to balance the equities, to assess the relative harms to the parties, as well as the interests of the public at large.") (citation and quotation marks omitted).

At its core, a stay of removal is "'an exercise of judicial discretion,' and '[t]he propriety of its issue is dependent upon the circumstances of the particular case.'" *Nken*, 556 U.S. at 432 (citation omitted, alteration in original). Under the circumstances presented herein, no security bond is required under Federal Rule of Civil Procedure 65(c).

Courts can also "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705. This includes staying removal efforts against an alien during pendency of litigation to preserve the status quo and prevent petitioners from being improperly deported or transferred to far away jurisdictions while federal litigation is pending.

IV. ARGUMENT

Mr. Gardiner's case warrants injunctive relief because it satisfies all prongs of the test espoused in the *Nken* case, as discussed below:

A. Petitioner Is Likely to Succeed on the Merits.

Mr. Gardiner is likely to prevail on the merits of each of his claims, including: (1) his detention without a bond hearing is unlawful under the INA, (2) ICE has violated his constitutional due process rights, and (3)

1. Petitioner Is Likely to Prevail on His Claim That His Detention Without Bond Hearing Is Unlawful Under the INA

Mr. Gardiner is likely to succeed on the merits of this claim because the Immigration and Nationality Act ("INA") authorizes his detention only under 8 U.S.C. § 1226(a), which expressly provides for release on bond and for review of custody determinations by an Immigration Judge. By denying Petitioner any bond hearing, the Department of Homeland Security ("DHS") is acting contrary to the plain text of the statute.

The INA establishes three detention frameworks: detention pending removal proceedings under § 1226; detention of certain recent arrivals under § 1225; and post-removal-order detention under § 1231. Petitioner does not fall under § 1225, because he was lawfully admitted to the United States under the Visa Waiver Program ("VWP"), nor under § 1231, because he has no final order of removal. As a noncriminal, lawfully admitted noncitizen in removal proceedings, Petitioner is therefore subject only to discretionary detention under § 1226(a).

Section 1226(a) permits DHS to detain or release a noncitizen on bond pending removal proceedings and, critically, provides a right to review of custody determinations by an Immigration Judge. DHS's refusal to afford Petitioner a bond hearing thus violates the statute's express terms.

DHS relies on the Board of Immigration Appeals' decision in *Matter of Werner*, 25 I&N Dec. 45 (BIA 2009), which concluded that VWP entrants are detained under 8 U.S.C. § 1187 and are therefore categorically ineligible for bond hearings. That decision is incorrect and has been widely rejected by federal district courts. Section 1187 governs eligibility for visa-free entry and limits the forms of substantive relief available to VWP entrants, but it contains no detention authority whatsoever. Congress did not grant DHS the power to detain under § 1187, and an agency may not manufacture detention authority where the statute is silent.

District Courts rejecting *Matter of Werner* have emphasized three points that strongly support Petitioner's claim here. First, Congress spoke clearly in § 1226 by designating it as the detention authority for noncitizens pending removal proceedings, leaving no statutory gap for agency interpretation. Second, permitting bond hearings for VWP entrants does not undermine the VWP's purpose, because bond determinations are procedural safeguards—not substantive relief from removal. Third, § 1187's failure to mention detention confirms that Congress intended § 1226 to govern custody in cases like Petitioner's.

In light of the Supreme Court's rejection of Chevron deference where Congress has spoken clearly, DHS's reliance on *Matter of Werner* is even less defensible. The Attorney General has delegated authority to Immigration Judges to conduct custody and bond determinations under § 1226, and Petitioner therefore has a statutory right to such a hearing.

Because Petitioner is detained solely under § 1226(a) and has been denied the bond hearing that statute requires, he is likely to prevail on his claim that his continued detention without a bond

hearing is unlawful. This Court should therefore restrain Respondents from continuing to detain Petitioner without affording him a prompt bond hearing, or, even better, order his immediate release pending such a hearing.

2. Petitioner Is Likely to Prevail on His Fifth Amendment Due Process Claims

a. Substantive Due Process

The Fifth Amendment protects all "persons" within the United States from deprivation of liberty without due process of law. Freedom from physical restraint lies at the core of that protection.

Mr. Gardiner was lawfully admitted to the United States in 2019 and has lived freely in the country for years. He is not an arriving alien at the threshold of entry, and his detention does not implicate the Executive's plenary power over admission.

Courts nationwide have recognized that noncitizens who have effected entry into the United States possess a constitutionally protected liberty interest in freedom from detention and are entitled to an individualized bond hearing. Neither Congress nor the Executive may categorically deny that protection. Even where statutes limit the forms of *substantive relief* available to certain noncitizens, due process protections attach based on the individual's presence, ties, and life in the United States.

Here, DHS has violated Petitioner's substantive due process rights by categorically denying him a bond hearing based solely on his manner of entry, despite his lawful admission and years of residence. As applied to Petitioner, this deprivation of liberty—without any individualized assessment of necessity—offends the Fifth Amendment.

b. Procedural Due Process

Mr. Gardiner is also likely to prevail on his procedural due process claims. The constitutional adequacy of procedures is evaluated by balancing (1) the private interest affected, (2) the risk of erroneous deprivation, and (3) the government's interest. Each factor weighs decisively in Petitioner's favor.

First, Petitioner's liberty interest is extraordinarily weighty. Detention by the government constitutes one of the most serious deprivations of liberty recognized by the Constitution.

Second, the risk of erroneous deprivation in this case is unacceptably high. Petitioner has been detained without a bond hearing, without neutral review of whether he is a flight risk or danger, and without any meaningful opportunity to contest the government's custody decision. This lack of process creates a substantial risk that Petitioner is being detained unnecessarily and unlawfully.

Third, the government's interest in denying basic procedural protections is minimal. Bond hearings are routine, efficient proceedings that immigration judges are fully equipped to conduct. The government has no legitimate interest in detaining individuals who can demonstrate they pose no danger and are likely to appear for future proceedings.

Further, the procedural due process violations in this matter extend beyond detention alone. ICE officers also denied Petitioner the opportunity to confer with counsel before executing removal-related forms, falsely recorded that he "refused to sign," and failed to provide him a meaningful opportunity to express his fear of return to his home country, despite regulatory protections requiring such an opportunity. And despite exhaustive effort, the Deportation Officer n charge of Mr. Gardiner's case has remained unnamed and unreachable. These failures compound the constitutional violations by increasing the risk of erroneous detention and removal.

b. "As Applied" Due Process

Petitioner, who was lawfully admitted into the United States, has a fundamental interest in liberty and being free from official restraint. Courts across the nation are recognizing that noncitizens who are not at the threshold of entry, like Petitioner, have a due process right to an individualized bond hearing.

Petitioner is and has been inside the United States since 2019, freely living his life. He is not currently seeking admission. In non-admission contexts such as this, which do not directly implicate the executive's sovereign prerogative, the Due Process Clause protects liberty interests that may accrue regardless of statutory allowances. Liberty interests may spring from lives lived, connections fostered, and promises made or implied.

In short, regardless of how Petitioner is categorized by the DHS, his detention without a bond hearing is an "as applied" violation of the Fifth Amendment based on the fact that he has accrued a liberty interest by way of his lawful entry and presence in the United States since 2019, has a wife here whose I-130 on his behalf has already been approved by USCIS, and has a pending I-485 application for adjustment of status that was submitted and pending before his detention by ICE began.

3. Petitioner Is Likely to Prevail on His 4th Amendment Claim that He was Unlawfully Detained Beyond the 48-hours allowed in § 287

Mr. Gardiner is likely to succeed on the merits for this claim because he was detained by local law enforcement beyond the strict forty-eight-hour limit permitted by federal regulation governing ICE detainers, without a warrant or independent legal authority.

Immigration detainers are administrative requests issued by U.S. Immigration and Customs Enforcement ("ICE") to state or local law enforcement agencies asking that an individual be temporarily held so ICE may assume custody for civil immigration enforcement. The authority for such detainers is narrowly limited by 8 C.F.R. § 287.7(d), which permits a local agency to hold an individual for no more than forty-eight hours beyond the time the individual would otherwise be released.

Detainers are not warrants and do not confer independent arrest authority. ICE's own guidance confirms that detainers are requests, not commands, and that if ICE does not assume custody within the forty-eight-hour window, the local agency may not lawfully continue to detain the individual. Once that period expires, the detainer lapses and the custodial authority of the local jail ends.

Here, Petitioner was arrested by the Orlando Police Department on November 22, 2025. On December 17, 2025, at approximately 4:00 p.m., he posted bail and was otherwise entitled to immediate release from the Orange County Jail. The only basis for continued detention was an ICE detainer.

Under 8 C.F.R. § 287.7(d), the forty-eight-hour hold expired on Friday, December 19, 2025, at approximately 4:00 p.m. ICE did not assume custody within that period. Nevertheless, Orange County Jail continued to detain Petitioner beyond the regulatory deadline and through the weekend in anticipation of ICE action. Petitioner was not transferred to ICE custody until Sunday, December 21, 2025.

This continued detention beyond the forty-eight-hour limit was unlawful. Once the detainer expired, Petitioner's continued confinement constituted a new seizure requiring independent legal authority. No warrant issued, and no probable cause supported continued detention. Holding

Petitioner beyond his release date based solely on an expired administrative detainer violated 8 C.F.R. § 287.7(d) and the Fourth Amendment.

Because DHS failed to assume custody within the time allowed by regulation and nonetheless induced Petitioner's continued confinement, his arrest and detention were not lawfully executed. Petitioner is therefore likely to prevail on his claim that his detention beyond the forty-eight-hour limit was unlawful, warranting immediate injunctive relief to prevent ongoing and future violations of his constitutional rights.

B. Petitioner Has Suffered and Will Continue to Suffer Irreparable Harm Absent Injunctive Relief.

Parties seeking preliminary injunctive relief must also show they are "*likely* to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

Mr. Gardiner is currently suffering irreparable harm as a result of Respondents' unlawful detention without bond hearing, deprivation of his protections via asylum or withholding of removal, and obstruction of his pending adjustment of status application.

As detailed above, Respondents are detaining him without a bond hearing, separating him from his U.S. citizen spouse, and potentially preventing him from completing his already pending I-485 based on his already approved I-130 petition. **Exhibits 3-4**. These actions have caused and continue to cause irreparable harm in the form of loss of liberty, prolonged family separation, emotional distress, and the effective denial of access to statutory immigration relief.

Courts consistently recognize that unlawful detention, deprivation of liberty, and

interference with access to immigration relief constitute irreparable harm. See *Hernandez v. Sessions*, 872 F.3d 976, 994–96 (9th Cir. 2017); *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011).

Respondents have failed to provide Mr. Gardiner an opportunity to make his claim of fear from returning to his home country. If ICE gave him the credible fear interview he is entitled to they would understand that Mr. Gardiner is from a political family in Turks and Caicos and both he and his family have been victims of targeted violence. He was once shot at while in the company of his close cousin, who was later murdered in a targeted killing. **Exhibit 5**.

Mr. Gardiner would suffer irreparable harm if he was unlawfully deported back to his home country without the due process of a credible fear interview and thereafter killed or injured by the type of targeted violence that he has suffered before and now fears to suffer again.

Lastly, ICE has refused to give Mr. Gardiner any medical attention or even over-the-counter pain pills for his severe migraines.

Absent injunctive relief, Respondents will continue to detain Petitioner without bond and block his ability to adjust status. Petitioner will remain incarcerated, unable to regularize his status despite eligibility, incapacitated by migraine pain, and separated from his spouse. Worst case scenario, he is sent back to a country he fears and is killed due to his well-known family ties. These harms cannot be remedied after the fact. For these reasons, Petitioner has demonstrated irreparable harm.

C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor.

When the Government is the opposing party, the balance of hardships and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Mr. Gardiner faces severe hardships:

continued unlawful detention, deprivation of liberty, denial of medical access, interference with statutory adjustment-of-status rights, and separation from his U.S. citizen spouse.

Respondents, by contrast, face no cognizable hardship. Releasing Petitioner, whether on bond or parole, imposes at most minimal administrative burdens. After all, even VWP overstays are eligible for bond hearings under § 1226(a). The Government "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

The public interest strongly favors ensuring that immigration statutes are applied correctly, that constitutional rights are respected, and that agencies act within the bounds of their delegated authority. See *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992). Granting injunctive relief here serves—not undermines—the public interest.

V. CONCLUSION

For the foregoing reasons, Mr. Gardiner requests that the Court grant temporary restraining order and/or preliminary injunctive relief by:

(1) Ordering a STAY OF REMOVAL enjoining Respondents from issuing a final administrative order of removal or effectuating Petitioner's physical removal while this litigation is pending; and

(2) Enjoining Respondents from moving Petitioner outside of this judicial jurisdiction for the pendency of this action;

DATED: January 7, 2026

Respectfully Submitted,

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jordan Keihdano Gardiner, and submit this verification on his behalf. I have conducted an appropriate inquiry into the circumstances of this case, and I believe that all factual allegations contained in the Petition for Writ of Habeas Corpus and accompanying Motion for Temporary Restraining Order and Preliminary Injunction are true. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and accompanying Motion for Temporary Restraining Order and Preliminary Injunction are true and correct to the best of my knowledge. Further, I verify that I read the facts of the case to the Petitioner over the telephone and he expressly confirmed to me that they are accurate to the best of his belief and knowledge.

/s/ Taymoor M. Pilehvar

CERTIFICATE OF SERVICE

I certify that on the 7th day of January, 2026 I electronically filed the foregoing document and attachments with the Clerk of the Court using CM/ECF. I also certify that the foregoing document

is/are being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Taymoor M. Pilehvar